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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re B.D., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

K.J.,

Defendant and Appellant.

G042590

(Super. Ct. No. DP018311)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

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K.J. (mother) appeals from juvenile court orders finding her son B.D. a dependent of the court and removing him from her physical custody. (Welf. & Inst. Code, § 300 et seq.; all statutory citations are to this code unless noted.) She claims there is insufficient evidence to sustain the court's jurisdictional and dispositional findings. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

The Orange County Social Services Agency (SSA) filed a petition April 1, 2009, alleging 14-year-old B.D. came within the juvenile court's jurisdiction because mother had inflicted, or posed a substantial risk of inflicting serious physical harm to the child, and had failed to protect B.D. from his brother's physical abuse. (§ 300, subds. (a), (b).)¹ Specifically, the petition alleged that a few weeks before March 30, 2009, mother hit B.D. with a closed fist, splitting his lip and causing him to black out. It also alleged on numerous unspecified occasions, mother punched B.D., choked him, and hit him with an extension cord, causing marks, bruises and scarring, and as a result B.D. was afraid to return home. The petition further alleged mother had a substance abuse problem that included the use of marijuana, which impaired her ability to provide parental care and support, and that she negligently allowed B.D. access to her marijuana. The court detained B.D. and placed him with the paternal grandmother.

¹ The petition also alleged B.D.'s alleged father, M.D., knew or should have known of the abuse or risk mother posed to B.D. Father spoke to the social worker but did not appear in the proceedings below, apparently because of outstanding criminal matters. At the disposition hearing, M.D.'s appointed lawyer asked that her client remain designated as an alleged father and not be given a case plan. The court rejected the request and found M.D. to be B.D.'s presumed father.

At the combined jurisdictional and dispositional hearing in August 2009, the trial court received SSA's social study reports into evidence. The reports reflected that on March 30, 2009, officials at B.D.'s high school found B.D. crying while wandering around the school grounds. B.D. told a school counselor that he had been suffering ongoing physical abuse from his mother and he could not take it any longer. B.D. explained that earlier that morning his mother threw shoes at him, striking him in the face, because he was late for school. B.D. described similar abuse, the most recent occurring a few weeks earlier when his mother learned he had possession of her marijuana. Mother hit him in the face with a closed fist, grabbed him by the throat and held him against a wall, cutting off his air supply and causing him to pass out. After he awoke, mother took him to his aunt's room and hit him with an extension cord. B.D. estimated mother beat him at least twice a month, and he displayed injuries and scars on his arms, body, and face that he attributed to her beatings. He admitted some of his bruises were from falling off a skateboard and a motorcycle, but the linear marks on his arm were remnants of beatings mother administered with a switch or extension cord.

B.D.'s older half-brother, D. had reported similar abuse to Riverside County authorities in the 1990's. In 1997, D. stated mother hit him with belts and an electrical cord. In 1998, D. told a reporting party "something [was] going on at home that [he could not] talk about because they will take me away from my mom." He told this person mother hit him on the hands and buttocks with a belt and electrical cords. In 2000, D. came to school with scrapes and injuries on his back. The injuries occurred during a period when D. had been suspended from school. D. claimed he fell down, but the injuries did not appear consistent with a fall. The reports had been deemed unsubstantiated at the time.

Mother denied physically abusing B.D., explaining he was too old to discipline in this way. She admitted hitting him in the past with an open hand on the buttocks or his hand, but had not done so for about a year. She normally disciplined him by taking away his cell phone and video games and preventing him from leaving the house. His recent injuries occurred from falling off a motorcycle. She punished B.D. the previous three months because of poor grades, truancy, smoking marijuana and coming home with unexplained cash. She admitted using a belt on his buttocks when he was nine or ten years old because he took a BB gun to school. She was “totally against” disciplining with a switch or extension cord. Mother admitted occasional use of marijuana, but she did not smoke around B.D. or keep it in the house.

According to mother, on the day he was taken into protective custody, B.D. claimed it was a school holiday and anticipated seeing his friends, who were off school. He became upset and cried when mother learned the truth and made him attend school. Maternal relatives generally corroborated mother, stating mother verbally disciplined B.D. and placed him on restriction, but they observed no evidence of physical abuse.

Mother called several witnesses at the jurisdictional hearing. Fifteen-year-old J. testified he and B.D. had been friends for about a year. They skateboarded, played video games and basketball and went to parties together. B.D. complained about being “on punishment” but never claimed his mother hit him. A few days before being taken into protective custody, B.D. came over and asked if he could stay with J. because he did not want to live with mother anymore, complaining he could never do what he wanted. He said he was going to tell the school his mom beat him so he could stay with them.

J.'s 17-year-old brother R. testified B.D. stated he was going to tell the police his mom beat him. R. stated B.D. "said he was just going to make it up so he could live with us." B.D. liked being around them because it was fun.

J. and R.'s mother testified that on the day of the incident at school, a social worker called and asked if B.D. could come to her house. She spoke to B.D. and asked "was it true and he said, no. I just want to come over there and stay with you and your kids. If they don't let me come over and stay with you and your kids then I will go to the system." She saw B.D. again about a month before trial. She asked if he had finally told the truth, and "he said the district attorney would not let him tell the truth. They don't want him to say nothing."

The maternal grandmother testified mother hit B.D. with a ruler on the hands over a year earlier, but this was the only time she saw this type of discipline. B.D. occasionally lied so he could do what he wanted. For example, he claimed he had been with his father when he visited his friends and was injured on a motorcycle. The grandmother discovered B.D. holding a half-smoked marijuana cigarette in his hand and informed his mother. A loud argument ensued, with B.D. crying, kicking and "jerking around." The grandmother did not want "to see him go through that" so she went downstairs to her apartment. Later, they talked about why she had to tell his mom, and he said he was okay. He did not have a bloody lip or any injuries. About a month before trial, B.D. visited her and told her he wanted to tell the truth, he was "tired of it," admitted he lied and that "it did not happen."

B.D. testified he told the truth about his mother beating and choking him when she caught him with the marijuana. "[W]hen I walked into the room, she slapped me. And then she started punching me, and that's when she choked me [against the

closet]. And then after that she punched me again, and then I got – like I was knocked out. I was on the ground, and she dragged me to my auntie’s room and beat me with” an electrical cord from his video game console. He heard his uncle say “get up” and he awoke in the kitchen. He showed the police marks on his knees from the extension cord. He also had red marks on his chest, hands, arms and thighs, and identified in court a mark on his forearm he attributed to the extension cord. His grandmother was present during the beating. “[F]irst, she was watching. And then when it started getting worse, she was grabbing my mom, pulling her off me. And that’s when my mom took me into the room and closed the door and beat me with the extension cord, so she couldn’t really stop it, because usually my grandmother would stop it when it gets bad.”

On the day he was taken into protective custody, mother told B.D. that if the school called for “anything that she was going to whip [him] again.” He was crying as he walked into school and a security guard saw him and took him to a counselor. B.D. did not tell J. and R. mother hit him, but he did tell them he was going to run away to their house. He denied saying he was going to get his mother in trouble. He only spoke to their mother when he was at the group home, and again a few days before trial. He did not tell her he had lied to the police or that he was ready to tell the truth.

When he was in the fourth grade, mother hit him with a belt and choked him after he tried to cut his own hair with scissors. He admitted he and his brother “play [fought] here and there” and one time his brother hit him with an extension cord in the summer of 2008. B.D. had a friend’s brother fight D., and mother “whipped” B.D. after that incident. B.D. had seen both his parents smoke marijuana. B.D. testified he did not fear his mother and wanted to live with her, explaining his mother disciplined him because “she doesn’t want me to grow up to be like my brother.”

Mother testified concerning B.D.'s misbehavior at school, including "ditching class" and lying about it, smoking marijuana, and bringing a BB gun to school. She punished him by taking away his cell phone, games and bike, and restricting him from television and leaving the house to see friends. She used a belt on his buttocks when he was younger, and spanked him with a ruler. She would hit him four or five times over his pants until he started crying. But she claimed it had been three years since she had spanked him, and she denied ever punching, slapping or choking him. On the day he was caught with marijuana, she yelled at him, grabbed him by his shirt, and pushed him against the wall. She interrogated him about the marijuana and he started crying. She told him he was on two months' punishment, took away his cell phone and video games, and told him he could not see J. She also took him for drug testing. She denied dragging him into his aunt's room or hitting him with an extension cord. She asserted B.D. would lie and manipulate father and her to go to J. and R.'s residence. Because they lived in a bad neighborhood with drugs, gangs and shootings, she told him the day before he was taken into protective custody he could "no longer be over there." B.D. cried and protested her decision.

The juvenile court found the allegations of the petition to be true by a preponderance of the evidence. The court found B.D. credible noting he consistently gave the same account in statements before and during the hearing. The court observed B.D. was found wandering through school crying, suggesting that he did not "race to school and try to tell everybody" what mother did. His credibility was enhanced because while he loved his mother and wanted to live with her, he did not recant his description of his mother's abuse. The court also noted mother admitted using a belt to punish him and pushing him against the wall when confronting him about using marijuana.

At the dispositional phase of the hearing, minor's counsel noted that B.D. wanted to return home, but she had some concerns "because the mother[has] testified that she believes that the proceedings are [B.D.'s] fault" and "[t]here was at least a period of time until just fairly recently that she didn't want him back, and she hasn't participated in any services." Counsel expressed concern mother "would just go right back to the same pattern of parenting" The court found by clear and convincing evidence B.D.'s welfare required divesting physical custody from the parents and placing B.D. with SSA. The court ordered reunification services for both parents with liberal supervised visitation for mother.

II

DISCUSSION

A. *Substantial Evidence Supports the Juvenile Court's Jurisdictional Finding*

Mother contends there is insufficient evidence to support the juvenile court's finding B.D. suffered, or was at substantial risk of suffering, serious physical harm or illness as a result of his mother's actions.

Section 300 provides in relevant part, "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. . . ."

We review the jurisdictional findings for substantial evidence. Substantial evidence is evidence that is "reasonable, credible, and of solid value." (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.) The substantial evidence standard is a difficult hurdle for an appellant. "If there is any substantial evidence, contradicted or uncontradicted, which

will support the judgment, we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.) A reviewing court is in no position to judge the credibility of witnesses or reweigh the evidence, and therefore must resolve all evidentiary conflicts in favor of the juvenile court’s findings. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.)

As recounted in detail above, B.D. told authorities and testified mother assaulted him after learning he held a marijuana cigarette in his hand. B.D.’s injuries and scars corroborated his claims of abuse. The facts of the assault and other incidents described by B.D. constituted sufficient evidence to support the jurisdictional findings.² (*In re David H.* (2008) 165 Cal.App.4th 1626, 1644 [evidence mother struck 7-year-old son with belt, cord, or ruler as disciplinary measure, inflicting bruises, red marks, welts, and broken skin on his arms, back, and chest, is sufficient to support finding child suffered serious physical harm].)³

B. Substantial Evidence Supports the Juvenile Court’s Dispositional Order

Mother also contends the court erred by removing B.D. from her custody. She asserts that with the provision of services and supervision, SSA could have ensured he was safe in her custody.

² Mother attacks discrete allegations of the petition arguing they should have been stricken. SSA agrees a few of the allegations (a-3, a-6) do not fit within the language of section 300, subdivision (a), but asserts any error was harmless. We need not evaluate every allegation of the petition if substantial evidence exists to support jurisdiction.

³ SSA observes “family pressure, B.D.’s desire to go or stay home, his love for and loyalty to his mother, reluctance to admit abuse to his peers, or some other reason” might influence B.D. to hide abuse or recant falsely.

Section 361 provides in pertinent part, “(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. . . . The limitations may not exceed those necessary to protect the child. . . . [¶] (c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5) [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody. . . .”

At the dispositional hearing, the court must decide where the child will live while under its supervision, with the paramount concern being the child’s best interest. (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.) “The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order. [Citation.] On a challenge to an order removing a dependent child from his or her parent, we ‘view the record in the light most favorable to the order and decide if the evidence is reasonable, credible and of solid value.’ [Citation.] We draw all reasonable inferences from the evidence to support the findings and orders of the dependency court. [Citation.]” (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462-463; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [removal findings

reviewed under the substantial evidence test]; but see *In re Julie M.* (1999)

69 Cal.App.4th 41, 48 [dispositional findings reviewed for abuse of discretion].)

The juvenile court found mother abused and failed to protect B.D. She denied the abuse, blamed B.D. for their predicament, and refused referrals for drug testing, counseling and anger management in advance of the trial. She was “against going” to counseling and refused to participate because she did not “do anything wrong.” She also failed to visit B.D. after he was taken into protective custody. She expressed satisfaction with B.D.’s placement because she could “still see him” when she wanted, which appeared to be rarely or never. Mother’s intransigence indicated B.D.’s home life was unlikely to improve for the better should he return to mother’s custody. (See *In re Jessica B.* (1989) 207 Cal.App.3d 504, 516-517.) The court therefore could reasonably conclude mother’s lack of cooperation would undermine SSA’s ability to ensure B.D.’s safety if the court returned him to his mother’s care under an SSA program of services and supervision. B.D.’s expressed desire at the dispositional hearing to live with his mother, and his claim that he did not fear mother, did not demonstrate he would be safe in her care. As SSA notes, he might even be more circumspect in disclosing future abuse. The juvenile court therefore could reasonably conclude returning B.D. to mother’s care posed a substantial risk to B.D.’s health, safety, protection, or physical or emotional well-being, and that reunification services were necessary to alleviate the conditions that necessitated his removal from mother’s care.

Mother relies on *In re Steve W.* (1990) 217 Cal.App.3d 10 to support her insufficient evidence argument. There, the juvenile court ordered removal of an infant from the physical custody of his mother after the father killed a half-sibling. The appellate court reversed the order removing the infant from the mother’s custody,

explaining she did not commit the abuse, nor was she present when prior injuries to the half-sibling occurred. The court noted the mother made inquiries concerning the injuries, assisted in the prosecution of the father for the killing, and cut all ties to the father. The trial court based its ruling on speculation the mother might find herself in a similar relationship again, which constituted an insufficient basis for removal. (*Id.* at pp. 22-23.) It is apparent *In re Steve W.* bears no resemblance to the case before us and therefore we need not discuss it further.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, ACTING P. J.

IKOLA, J.